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JOHN BARNES, *et al.* & DORIS  
RICHARDSON,  
Tenants/Petitioners

v.

2724 ALABAMA AVENUE, LLC &  
MICHAEL SIMS,  
Housing Providers/Respondents.

Case Nos. RH-TP-06-28678  
RH-TP-06-28800  
(Consolidated Cases)  
*In re* 2724 Alabama Avenue SE

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**ORDER ON TENANTS' MOTION FOR ATTORNEY'S FEES**

On January 18, 2008, I issued a Final Order in this case requiring Housing Providers/Respondents to pay rent refunds and interest totaling \$225.85 to the Tenants/Petitioners. In addition, I imposed a \$2,500 fine on Housing Providers arising out of willful violations of the Rental Housing Act of 1985 (the Act or the Rental Housing Act).

On February 4, 2008, Tenants/Petitioners filed a Motion for Reasonable Attorney's Fees, seeking an award of \$16,127.25. Housing Providers stated that they opposed the motion for attorney's fees in a Motion for Reconsideration, filed on February 8, 2008, but they filed no formal opposition to the motion for attorney's fees. For reasons discussed below, I grant Tenants' motion but reduce the requested award to \$13,127.25.

The Rental Housing Act provides that: “The Rent Administrator [Administrative Law Judge], Rental Housing Commission, or a court of competent jurisdiction may award reasonable attorney's fees to the prevailing party in any action under this chapter, except actions for eviction authorized under § 42-3505.01.” D.C. Official Code § 42-3509.02. The Rental Housing Regulations, in turn, provide that a “presumption of entitlement to an award of attorney's fees is created by a prevailing tenant, who is represented by an attorney.” 14 District of Columbia Municipal Regulations (DCMR) 3825.2.

The Regulations establish a two-step process for assessment of attorney's fees. “The starting point shall be the lodestar, which is the number of hours reasonably expended on a task multiplied by a reasonable hourly rate.” 14 DCMR 3825.8(a). The lodestar amount then “may be reduced or increased” in consideration of thirteen factors:

- (1) the time and labor required;
- (2) the novelty, complexity, and difficulty of the legal issues or questions;
- (3) the skill requisite to perform the legal service properly;
- (4) the preclusion of other employment by the attorney, due to acceptance of the case;
- (5) the customary fee or prevailing rate in the community for attorneys with similar experience;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount involved and the results obtained;
- (9) the experience, reputation, and ability of the attorney;
- (10) the undesirability of the case;
- (11) the nature and length of the professional relationship with the client;

(12) the award in similar cases; and

(13) the results obtained, when the moving party did not prevail on all the issues.

14 DCMR 3825.8(b). *See Covington v. Foley Props.*, TP 27,985 (RHC June 12, 2007) at 2-3.

The 13 factors prescribed in the Rental Housing Regulations are virtually identical to the 12 factors enumerated in *Frazier v. Cent. Motors, Inc.*, 418 A.2d 1018, 1025 (D.C. 1980), with the addition of a thirteenth factor: “The results obtained, when the moving party did not prevail on all the issues.”

In practice, the two steps required by the Rental Housing Regulations are not entirely independent. The lodestar rate requires an assessment of whether the hours involved were “reasonably expended,” and whether the rates charged were “reasonable.” The assessment of what is reasonable necessarily requires the Administrative Law Judge to consider many of the factors that are also considered in the second step of the process.

Under the Rental Housing Act and the Rental Housing Regulations, attorney's fees are only available to a tenant who is a “prevailing party.” To be deemed a prevailing party “it is necessary only that the plaintiff succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing the suit.” *District of Columbia v. Jerry M.*, 580 A.2d 1270, 1274 (D.C. 1990) (quoting *Hensley v. Eckhart*, 461 U.S. 424, 433 (1983) (quoted in *Slaby v. Bumper*, TP 21,518 (RHC Sep. 21, 1995) at 14). Here, Tenants prevailed in two distinct respects. First, they obtained a favorable decision on a motion for partial summary judgment in which this administrative court determined that rent increases that Housing Providers imposed were invalid and denied Housing Providers’ motion to dismiss one of the Tenants. Then, following a hearing, each of the Tenants obtained a small award and this

administrative court imposed a substantial fine on Housing Providers based on a finding of willful violation of the Rental Housing Act.

I find that the hours expended by Tenants' counsel and the hourly rate counsel seeks are reasonable for the work that was done. Counsel seek compensation for a total of 73.05 hours of attorney time spent preparing motions and other submissions, attending status conferences, preparing witnesses, attending a hearing, and preparing a Post-Hearing Brief. The affidavits of counsel itemize the time spent on each project and a description of what was done. Although it could be argued that some of the time spent on specific projects was unnecessary,<sup>1</sup> I find that the overall time expended is reasonable considering the work that was done and the complexity of the case, and that none of the time spent on specific items was obviously unnecessary. Therefore I accept Tenant's counsel's submission of hours expended as the lodestar for an award of attorney's fees.

I also find that Tenants' counsel's requested hourly rates are reasonable. Tenants seek reimbursement at hourly rates prescribed in the "Laffey Matrix," prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. The matrix derives from the hourly rates allowed by the United States District Court for the District of Columbia in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff'd in relevant part*, 746 F.2d 4 (D.C. Cir. 1984). It provides a schedule of hourly rates prevailing in the Washington, D.C. area for attorneys at various levels of experience. Use of the Laffey Matrix has been endorsed by the District of Columbia Court of Appeals for awards in cases where attorney's fees are permitted by statute. *Lively v. Flexible Packaging Ass'n*, 930 A.2d 984, 988-89 (D.C. 2007). *See also*

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<sup>1</sup> For example, it may not have been essential for both counsel to attend and bill for appearance at a prehearing conference on January 16, 2007.

*Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995) (approving use of the Laffey Matrix for pro bono attorneys).

The Laffey Matrix indicates that Tenants' senior counsel, Julie H. Becker, a 1999 law school graduate, should be compensated at a rate of \$245 per hour and her co-counsel, Beth Mellon Harrison, a 2003 law school graduate, should be compensated at a rate of \$205 per hour.<sup>2</sup> I find these rates are appropriate for attorneys who are graduates of leading law schools, have clerked in federal courts, and specialized in the representation of low income persons, including many landlord/tenant disputes. *See* Affs. of Julie H. Becker and Beth Mellon Harrison. The Laffey Matrix rates are also consistent with rates that the Rental Housing Commission has approved for other attorneys practicing in the field. *See, e.g., Dey v. L.J. Development, Inc.*, TP 26,119 (RHC Nov. 17, 2003) (awarding fees at a rate of \$305 per hour in 2003); *Carter v. Davis*, TP 23,535 (RHC Dec. 11, 1998) at 7-8 (awarding attorney's fees of \$115 per hour in 1998 for attorneys with less than five years of practice and \$280 per hour for a senior supervising attorney).

For these reasons, I accept the lodestar proposed by Tenants under which Tenants would be awarded total attorney's fees of \$16,127.25. Having established the lodestar, the Rental Housing Regulations next require this administrative court to consider whether the lodestar should be increased or reduced in consideration of the thirteen factors enumerated in 14 DCMR 3825.8(b).

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<sup>2</sup> The Laffey Matrix is available on the web site of the United States Attorneys Office for the District of Columbia, [http://www.usdoj.gov/usao/dc/Divisions/Civil\\_Division/Laffey/Matrix\\_7.html](http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey/Matrix_7.html).

I will not analyze each of the thirteen factors in detail. I conclude that factors (1) through (7), and factors (9) through (12) all weigh in favor of Tenants' attorneys and support the fee they seek. Tenants' counsel prepared, conducted, and presented their case in a professional manner that reflects a high level of competence and knowledge of the subject area. Tenants did not request any enhancement of the award based on any of these factors.

Notwithstanding this performance, Tenants' counsel failed to obtain one of their principle objectives, an award of treble damages for their clients. Tenants argued at length in the hearing and in their Post-Hearing Brief that Tenants were entitled to treble damages based on the amount of the illegal rent increases that Housing Provider imposed.<sup>3</sup> But in my Final Order I concluded that treble damages were inappropriate because the controlling language of the statute at the time the tenant petition was filed required that treble damages be based on the difference between the rent charged and the rent ceiling, rather than the difference between the rent actually charged and the rent that could legally be charged. Tenants' Post-Hearing Brief did not address the statutory construction issue at all. It assumed that the measure of treble damages was the difference between the rent charged and the rent legally allowed and focused on analyzing the evidence of bad faith to justify an award of treble damages. By failing to discuss the statutory construction issue, counsel missed an opportunity to raise whatever arguments may have been available to support their clients' position. Tenants received a total award of only \$225.85, rather than the award of more than \$7,000 that they sought.

Tenants' counsel's failure to prevail on the issue of treble damages, the issue of key concern to their clients, implicates two of the thirteen lodestar considerations: (8) the amount

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<sup>3</sup> Eleven of 22 pages in Tenants' Post-Hearing Brief were devoted to argument concerning treble damages.

involved and the results obtained; and (13) the results obtained when the moving party did not prevail on all issues. To evaluate these considerations, this administrative court must weigh competing policies.

On one hand, the Rental Housing Regulations establish a “presumption of entitlement to an award of attorney's fees” to a prevailing tenant. 14 DCMR 3825.2. The Rental Housing Commission has held that “[t]he enforcement of the tenants’ rights depends on the willingness of attorneys to represent them.” Consequently, “[t]he amount of attorney fees should not be connected to the amount of the monetary recovery.” *Town Ctr. Mgmt. Corp. v. Pettaway*, TP 23,538 (RHC Feb. 29, 1996) at 11.<sup>4</sup>

On the other hand, the Court of Appeals has followed the principle enunciated by the United States Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) that if “a plaintiff has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount.” *See Lively v. Flexible Packaging Ass’n*, 930 A.2d 984, 992 (D.C. 2007) (quoting *Hensley*). *See also Farrar v. Hobby*, 506 U.S. 103, 115 (1992) (“when a plaintiff recovers only [minimal] damages . . . the only reasonable [attorney's] fee is usually no fee at all”) (quoted in *Shore v. Groom Law Group*, 877 A.2d 86, 93 (D.C. 2005).

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<sup>4</sup> The Commission purported to be quoting from *Ungar v D.C. Rental Hous. Comm’n*, 535 A.2d 887, 892 (D.C. 1987), but the quoted sentences do not appear in *Ungar*. In *Ungar* the Court of Appeals awarded attorney's fees to a tenant in a case where Housing Provider’s counsel “acknowledged that the hours spent, as well as the hourly rate, [of tenant’s counsel] were reasonable.” *Id.* at 891. The Court of Appeals did state in *Ungar* that “the purposes of the attorney's fee provision are to encourage tenants to enforce their own rights, in effect acting as private attorneys general, and to encourage attorneys to accept cases brought under the [Rental Housing Act].” *Id.* at 892.

Here it would be inappropriate to deny Tenants' counsel attorney's fees merely because the award to their clients was minimal. As Tenants' counsel point out, they have achieved considerable results for their clients. By preparing and filing the original tenant petition they persuaded Housing Providers to withdraw the demand for a rent increase and to refund the overpayments to Tenants. By prevailing on their motion for summary judgment Tenants established that Housing Providers' rent increase was illegal and removed any threat that Housing Providers might reinstate the increase. At the hearing Tenants' counsel were able to prove that Housing Providers acted willfully and in bad faith, justifying the imposition of a substantial fine. Thus, counsel obtained results that will deter not only Housing Providers, but other like-minded housing providers from attempting similar violations of the Rental Housing Act in the future.

Notwithstanding these achievements, Tenants' counsel did not prevail on the issue that was of principle concern to their clients — obtaining a significant monetary recovery for their clients through an award of treble damages. Tenants' counsel acknowledged in the opening statement that the prospect of obtaining treble damages was the impetus for Tenants' decision to go forward with the hearing after prevailing on their Motion for Summary Judgment, which established that Housing Providers' rent increases were illegal. Counsels' affidavits reflect that more than \$6,000 of the attorney's fees that Tenants seek were incurred in preparation and prosecution of the hearing and preparation of the Post-Hearing Brief.

In light of these factors, I find it is appropriate to reduce the lodestar amount in view of considerations (8) and (13) of 14 DCMR 3825.8(b). Although the fees expended to obtain a favorable decision on Tenants' motion for summary judgment are appropriate, the results that counsel obtained do not justify fees of more than \$6,000 spent in preparation and prosecution of



the hearing in this case. Nevertheless, counsel prosecuted the hearing in good faith, obtained a small award for each of their clients, and secured a significant fine against Housing Provider that serves as an additional deterrent to any future violations of the Rental Housing Act. Therefore I will reduce the lodestar figure by \$3,000, approximately half the fees expended on the hearing. The resulting award, \$13,127.25, is somewhat over 80% of the fees that counsel seeks. I find this to be a reasonable fee in consideration of the results obtained.

Accordingly, it is this **21<sup>st</sup>** day of **April, 2008**,

**ORDERED**, that Housing Providers 2427 Alabama Avenue, LLC and Michael Sims pay counsel for Tenants/Petitioners, the Legal Aid Society of the District of Columbia, attorney's fees in the amount of **THIRTEEN THOUSAND, ONE HUNDRED AND TWENTY-SEVEN DOLLARS AND TWENTY-FIVE CENTS (\$13,127.25)** within thirty (30) days of issuance of this order; and it is further

**ORDERED**, that the appeal rights of any party aggrieved by this Order are stated below.

/s/  
Nicholas H. Cobbs  
Administrative Law Judge